

## LOAN ADMINISTRATOR AGREEMENT

**THIS IS AN AGREEMENT** entered into the \_\_\_\_ day of \_\_\_\_\_, 2020, by and between the **THE CITY OF WEST SAINT PAUL ECONOMIC DEVELOPMENT AUTHORITY**, a component unit of a Minnesota municipal corporation, (“the EDA”), and **NEIGHBORWORKS HOME PARTNERS**, a Minnesota non-profit corporation (“Consultant”).

### RECITALS

- A. The Consultant has agreed to provide certain Services (as defined below) in connection with the City’s housing programs.
- B. The EDA desires to hire the Consultant to render this technical, professional, and marketing assistance in connection with housing programs of the EDA for the term as set forth in this Agreement.
- C. Consultant is willing to provide such services on the terms and conditions set forth herein.

In consideration of the foregoing recitals and following terms, conditions and mutual promises contained herein, the parties agree as follows:

1. **Scope of Services.** The Consultant shall provide services as follows (the “Services”):
  - a) Administer the EDA’s Programs by:
    - 1) Providing information to residents about the Programs, upon request;
    - 2) Receiving and receipting loan applications;
    - 3) Processing, evaluating and underwriting loan applications;
    - 4) Providing homeownership counseling or referring interested parties to HUD-certified counseling agencies;
    - 5) Closing loans or coordinating loan closings of qualified applicants with a title company in accordance with the applicable Program;
    - 6) Overseeing the draw process for the funds, including, as necessary, reviewing draws, reviewing the progress of the work and collecting lien waivers and certificates of occupancy. Consultant may, for this purpose, rely on third-party representations and certifications;
    - 7) Providing monthly reports about the number of loans closed, demographic information of borrowers, pending loans and general application activity; and
    - 8) Coordinating the post-close components of the loan transactions with the EDA’s loan servicer (currently the Community Reinvestment Fund).
  - b) Assist West Saint Paul residents considering housing rehabilitation, including property visits, meeting with homeowners and potential contractors, suggesting alternatives for rehabilitation to homeowners, educating homeowners on the

construction bid process, assisting homeowners with evaluating bids and work completed and construction progress.

- c) Provide referral and other support for West Saint Paul residents wishing to pursue financing via the Minnesota Housing Finance Agency.
- d) Serve as a housing resource to West Saint Paul residents upon request, including provision of information and/or referrals regarding emergency assistance, housing rehabilitation and first time homebuyer options.
- e) Have Consultant's staff visit residences as determined necessary by Consultant.

2. **Term.** This Agreement shall be in full force and effect from the date of execution and shall continue through December 31, 2020, unless otherwise terminated as set forth below. In addition, should both parties agree the terms and conditions of this agreement will automatically be extended for an additional year period unless written notice of termination is provided by either party on or before November 30, 2020.

3. **Compensation.**

- a) **Loan Administration.** For services provided under this Agreement, the EDA shall pay to the Consultant the following, within 30 days of invoice:
  - i. 10% of the principal amount of any loan closed during the invoice period from West Saint Paul's Home Improvement Fund
  - ii. EDA shall pay the Consultant a fee of \$75 for each application that will not close because the applicants have been denied.

4. **Termination.** Notwithstanding any other provision hereof to the contrary, this Agreement may be terminated as follows:

- a) The parties, by mutual written agreement, may terminate this Agreement at any time. Upon termination of this agreement there shall be no other compensation paid to Contractor for work in progress or services performed other than payments already made under the provisions of paragraph 3 herein.
- b) EDA may terminate this Agreement upon the breach by Consultant of any of its material covenants contained herein, where such breach shall have continued for a period of thirty (30) days following the receipt by Consultant of a written notice from EDA, specifying the alleged breach; provided, however, if the nature of a non-monetary breach is such that Consultant cannot reasonably cure same in the thirty (30) day period, Consultant shall not be deemed to be in breach if it commences to cure within the thirty (30) day period, and diligently pursues same to completion within ninety (90) days following receipt by Consultant of such written notice. In the event of termination by EDA hereunder, Consultant shall be entitled to fees due to the date the notice of breach is sent by the EDA.
- c) If Consultant or EDA (as applicable) (i) files a voluntary petition in bankruptcy (ii) files a voluntary petition for reorganization under any bankruptcy law, statute or regulation or other similar statute or regulation, (iii) is adjudicated a

bankrupt, (iv) makes an assignment for the benefit of creditors or applies for or consents to the appointment of a receiver or trustee as part of or in conjunction with a “creditor plan” with respect to any substantial part of its assets, or (v) a receiver or trustee is appointed, or an attachment or execution levied with respect to any substantial part of its assets, and said appointment is not vacated, or the attachment or execution not released, within sixty (60) days, then this Agreement shall, effective as of such date, without notice or further action by either party, immediately terminate.

- d) Consultant may terminate this Agreement upon the breach by EDA of any of its material covenants contained herein, where such breach shall have continued for a period of thirty (30) days following the receipt by EDA of a written notice from Consultant, specifying the alleged breach; provided, however, if the nature of a non-monetary breach is such that EDA cannot reasonably cure same in the thirty (30) day period, EDA shall not be deemed to be in breach if it commences to cure within the thirty (30) day period, and diligently pursues same to completion within ninety (90) days following receipt by EDA of such written notice. In the event of termination by Consultant hereunder, Consultant shall be entitled to retain the entire fee under this Agreement.

5. **Insurance.**

- a) During the term of this Agreement, the Consultant shall obtain and maintain workers compensation, comprehensive general liability, and automobile liability insurance. Comprehensive general liability insurance shall have an aggregate limit of Two Million Dollars (\$2,000,000.00).
- b) Upon request by the EDA, the Consultant shall provide a certificate or certificates of insurance relating to the insurance required. Such insurance secured by the Contractor shall be issued by insurance companies licensed in Minnesota. The insurance specified may be in a policy or policies of insurance, primary or excess.
- c) Such insurance shall be in force on the date of execution of an Agreement and shall remain continuously in force for the duration of the Agreement.

6. **Indemnification.**

- a) Notwithstanding anything to the contrary in this Agreement, the EDA, its officers, agents, and employees shall not be liable or responsible in any manner to the Consultant, the Consultant’s successors or assigns, the Consultant’s subcontractors, or to any other person or persons for any third party claim, demand, damage, or cause of action of any kind, nature, or character, including intentional acts, arising out of or by reason of the performance of this Agreement by Consultant. The Consultant, and the Consultant’s successors or assigns, agree to protect, defend and save the EDA, and its officers, agents, and employees, harmless from all third party claims, demands, damages, and causes of action, to the extent caused by the negligence or wrongful acts of Consultant,

and the costs, disbursements, and expenses of defending the same, including but not limited to, attorney's fees, consulting services, and other technical, administrative or professional assistance.

- b) Nothing in this Agreement shall constitute a waiver or limitation of any immunity or limitation of any immunity or limitation on liability to which the EDA is entitled under Minnesota Statutes, Chapter 466, or otherwise.
7. **Assignment.** This Agreement shall not be assigned, sublet, or transferred, in whole or in part without the prior written approval of the EDA.
8. **Conflict of Interest.** The Independent Contractor shall use best efforts to meet all professional obligations to avoid conflicts of interest and appearances of impropriety in representation of the EDA. In the event of a conflict, the Independent Contractor, with the prior written consent of the EDA, shall arrange for suitable alternative services.
9. **Compliance with Laws.** The Consultant shall comply with all applicable Federal, State, and local laws, rules, ordinances, and regulations at all times and in the performance of the services pursuant to this Agreement.
10. **Notices.** Any notices permitted or required by this Agreement shall be deemed given when personally delivered or upon deposit in the United States mail, postage fully prepaid, certified, return receipt requested, addressed to:
- |             |  |
|-------------|--|
| Consultant: | NeighborWorks Home Partners<br>533 Dale Street North<br>St. Paul, MN 55103 |
| EDA:        | City of West Saint Paul<br>1616 Humboldt Avenue<br>West St. Paul, MN 55118 |
- Or such other address as either party may provide to the other by notice given in accordance with this provision.
11. **Entire Agreement.** This Agreement, any attached exhibits and any addenda or amendments signed by the parties shall constitute the entire agreement between the EDA and the Consultant, and supersedes any other written or oral agreements between the EDA and the Consultant. This Agreement can only be modified in writing signed by the EDA and the Consultant.
12. **Third Party Rights.** The parties to this Agreement do not intend to confer on any third party any rights under this Agreement.
13. **Counterparts.** This Agreement may be signed in one or more counterparts but all of which taken together shall constitute one instrument.

14. **Choice of Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the state of Minnesota. Any disputes, controversies, or claims arising out of this Agreement shall be heard in the state or federal courts of Minnesota, and all parties to this Agreement waive any objection to the jurisdiction of these courts, whether based on convenience or otherwise.
15. **Data Practices Act Compliance.** Data provided to the Consultant or created by the Consultant under this Agreement shall be administered in accordance with the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13, as amended.
16. **Agreement Not Exclusive.** The EDA retains the right to hire other housing program consultants, in the EDA's sole discretion.
17. **Records – Availability and Retention.** The Contractor agrees that the EDA or any of their duly authorized representatives at any time during the normal business hours and as often as they may reasonably deem necessary, shall have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, records, etc., which are pertinent to the accounting practices and procedures of the Contractor and invoice transactions relating to this Agreement. Contractor agrees to maintain these records for a period of three (3) years from the date of termination of this Agreement. The EDA can, at the EDA's expense obtain copies of any of the Contractor's records relevant to this Agreement.
18. **Nondiscrimination.** During the performance of this Agreement, the Contractor agrees to the following:

No person shall, on the grounds of race, color religion, age, sex, disability, marital status, public assistance status, criminal record, creed or national origin be excluded from full employment rights in, participation in, be denied the benefits of or be otherwise subjected to discrimination under any and all applicable federal and state laws against discrimination.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement on the respective dates indicated below.

EDA:

By: \_\_\_\_\_

Its: President\_\_\_\_\_

Date: \_\_\_\_\_, 2020.

By: \_\_\_\_\_

Its: Executive Director\_\_\_\_\_

Date: \_\_\_\_\_, 2020.

CONSULTANT:

NEIGHBORWORKS HOME PARTNERS

By: \_\_\_\_\_

Its: Executive Director\_\_\_\_\_

Date: \_\_\_\_\_, 2020.